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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130403322-4180-01]

RIN 0648-BD08

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Dolphin and Wahoo Fishery Off the Atlantic States; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 5 (Amendment 5) to Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would revise the annual catch limits (ACLs) and accountability measures (AMs) for the commercial and recreational sectors for dolphin and wahoo, and update the framework procedures for the FMP. The purpose of this rule is to help achieve optimum yield (OY) within the dolphin and wahoo fishery and to minimize socio-economic impacts, to the extent practicable, in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2013-0170" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0170](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0170), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in

the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the amendment, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/dw/2013/am5/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/dw/2013/am5/index.html).

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or e-mail: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery off the Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

## Background

The final rule for the Comprehensive ACL Amendment included Amendment 3 to the FMP, which established ACLs (including ACL allocations to both the recreational and commercial sectors), acceptable biological catches (ABCs), recreational annual catch targets (ACTs), and accountability measures (AMs) for dolphin and wahoo (77 FR 15916, March 16, 2012). Recreational catch

estimates used in the Comprehensive ACL Amendment were determined with data collected by the Marine Recreational Fisheries Statistics Survey (MRFSS), which was the best scientific information available at that time. NMFS has made significant improvements in the data collection and catch estimation methodologies that are used to collect and analyze the recreational data for the computation of ABCs, as well as ACLs and ACTs. NMFS now estimates recreational landings using the Marine Recreational Information Program (MRIP).

The MRIP collects recreational data on a more frequent basis and provides more accurate recreational catch estimates by accounting for potential biases such as possible differences in catch rates at high-activity and low-activity fishing sites, as well as variation in fishing effort throughout the day. As described in Amendment 5, the MRIP values used to estimate recreational landings, along with updates to headboat and commercial landings, are the best scientific information available to revise the ABC catch estimates, ACLs, recreational ACTs, and AMS for dolphin and wahoo. Updates to the commercial and headboat landings were included in the revisions to the ACLs and ACTs, because the ABC control rule and subsequent ABCs and ACLs established in the Comprehensive ACL Amendment used data from both the recreational and commercial sectors (77 FR 15916,

March 16, 2012). The headboat and commercial data updates reflect NMFS's ongoing data quality assurance and quality control protocols and reflect the the best available scientific information.

These revisions are necessary because if the ABC, ACL, and ACT values are not updated using the new MRIP estimates, the recreational ACLs would be based on MRFSS data, while the landings being used to track the recreational ACLs would be estimated using MRIP data. If this change is not made, it would result in inconsistencies in how the ACLs are calculated versus how the ACLs are monitored.

#### Management Measures Contained in this Proposed Rule

This proposed rule would revise the ACLs and AMs for dolphin and wahoo, and revise the framework procedures for the FMP.

#### Dolphin Commercial and Recreational ACLs

This proposed rule would revise the dolphin commercial and recreational ACLs. The dolphin commercial ACL would be increased from 1,065,524 lb (483,314 kg) to 1,157,001 lb (524,807 kg). The dolphin recreational ACL would be increased from 13,530,692 lb (6,137,419 kg) to 14,187,845 lb (6,435,498 kg). The effects of the increases in the ACLs for dolphin are expected to be negligible to the stock and the human

environment.

#### Wahoo Commercial and Recreational ACLs

This proposed rule would revise the wahoo commercial and recreational ACLs. The wahoo commercial ACL would be increased from 64,147 lb (29,097 kg) to 70,542 lb (31,997 kg). The wahoo recreational ACL would be increased from 1,427,638 lb (647,566 kg) to 1,724,418 lb (782,183 kg). The effects of the increases in ACLs for wahoo are expected to be negligible to the stock and the human environment.

#### Dolphin and Wahoo Commercial AMs

The current commercial AMs for dolphin and wahoo close the commercial sector for the respective species for the remainder of the fishing year, if commercial landings as estimated by the Science and Research Director (SRD) reach, or are projected to reach, the commercial ACL (in-season closure).

This proposed rule would also provide that if the commercial ACL is met or projected to be met, then the commercial ACL for the respective species in the following fishing year would be reduced by the amount of the commercial ACL overage. However, the commercial ACL overage adjustment would only be applied if the species is overfished and the total ACL (combined commercial and recreational ACLs) is exceeded. The Council determined the commercial ACL overage adjustment

(payback), combined with the in-season AM closure would offer greater protection to the stocks and provided the best management strategy for the commercial sector based on the biology and recent catch levels of dolphin and wahoo.

#### Dolphin and Wahoo Recreational AMs

The current recreational AMs for dolphin and wahoo provide that if recreational landings, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the NMFS Southeast Regional Administrator (RA) shall publish a notice to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

This proposed rule would modify the recreational AM to reduce the length of the fishing season and the recreational ACL in the fishing year following any recreational sector ACL overage, if the stock is overfished and the total ACL (commercial and recreational ACLs combined) is exceeded.

However, the recreational ACL overage adjustment and fishing season reduction would not be applied if the RA determines, using the best scientific information available, that such a reduction is unnecessary. The ability to reduce the recreational ACL when an overage of the respective ACL occurs would provide additional protection to the dolphin and wahoo stocks. The Council determined that this set of AMs best meets the objectives of the FMP, while complying with the requirements of the Magnuson-Stevens Act.

#### Dolphin and Wahoo FMP Framework Procedures

The current framework procedure for dolphin and wahoo was implemented in 2004 through the FMP (69 FR 30235, May 27, 2004). While comprehensive, the framework does not incorporate recent developments such as ACLs, ABC control rule, AMs, and the roles of the Council's Southeast Data, Assessment, and Review (SEDAR) process for stock assessments, and Scientific and Statistical Committee's (SSC) role in reviewing SEDAR data for the Council.

This proposed rule would revise the framework procedures for the FMP to add an ABC control rule, ACLs, ACTs, and AMs to the measures that could be revised via the regulatory amendment process. Additionally, this proposed rule would allow an ABC, ACL, and ACT to be modified using an abbreviated framework procedure, whereby after the Council has taken final action to



change an ABC, ACL, and/or ACT, the Council would submit a letter to the RA containing an analysis of the relevant biological, economic, social, and administrative information necessary to support the action. Based on the information provided by the Council, the RA would determine whether or not the requested modifications are warranted. If the requested modifications may be warranted, NMFS would develop the appropriate documentation to comply with the National Environmental Policy Act and other applicable law, and propose the action through rulemaking. NMFS anticipates this expedited process will shorten the time it would take to make routine changes to harvest limits in response to new scientific information, while allowing the public adequate time to comment on any change.

Additional Measures in Amendment 5 that are not Contained in this Proposed Rule

In addition to the measures in this proposed rule, this rule publishes for the public's convenience, certain measures contained in Amendment 5. Amendment 5 would revise the ABCs and recreational ACTs for dolphin and wahoo. Amendment 5 would increase the ABC for dolphin from 14,596,216 lb (6,620,732 kg) to 15,344,846 lb (6,960,305 kg). The ABC for wahoo would increase from 1,491,785 lb (676,662 kg) to 1,794,960 lb (814,180

kg). The revised ABCs would be established using MRIP data as opposed to using MRFSS data, as was used to establish the current ABCs.

Amendment 5 would also increase the current dolphin recreational ACT of 11,595,803 lb (5,259,768 kg) to 12,769,061 (5,791,949 kg) and the current wahoo recreational ACT of 1,164,953 lb (528,414 kg) to 1,258,825 lb (570,993 kg). The current recreational ACTs for dolphin and wahoo, implemented in the Comprehensive ACL Amendment, function as performance standards, and do not have management measures associated with them, such as triggering AMs (77 FR 15916, March 16, 2012).

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendment 5, the FMP, Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This proposed rule is expected to directly affect commercial fishermen and for-hire operators in the Atlantic. The SBA established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$19.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 487210, fishing boat charter operation). The SBA periodically reviews and changes, as appropriate, these size criteria. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). That rule increased the size standard for commercial finfish harvesters from \$4.0 million to \$19.0 million. Neither that rule, nor other recent SBA rules, changed the size standard for for-hire

vessels.

From 2008-2012, an annual average of 554 vessels with valid Federal permits to operate in the commercial sector of the Atlantic dolphin-wahoo fishery landed at least 1 lb (0.6 kg) of dolphin. These vessels generated average annual dockside revenues of approximately \$4.4 million (2011) from all species caught in the same trips as dolphin, of which \$591,000 (2011 dollars) were from dolphin. Each commercial vessel, therefore, generated an annual average of approximately \$8,000 in gross revenues, of which \$1,000 were from dolphin. For the same period, an annual average of 211 vessels with valid Federal permits to operate in the commercial sector of the dolphin-wahoo fishery landed at least 1 lb (0.6 kg) of wahoo. These vessels generated annual dockside revenues of approximately \$673,000 (2011) from all species caught in the same trips as wahoo, of which \$71,000 (2011 dollars) were from wahoo. Each vessel, therefore, generated an annual average of approximately \$3,183 in gross revenues, of which \$335 were from wahoo. Vessels that caught and landed dolphin or wahoo may also operate in other fisheries, the revenues of which are not reflected in these totals. Based on revenue information, all commercial vessels affected by the rule can be considered small entities.

From 2008-2012, an annual average of 2,005 vessels had

valid or renewable Federal permits to operate in the for-hire component of the recreational sector of the Atlantic dolphin-wahoo fishery. As of April 23, 2013, 1,623 vessels held a Federal charter/headboat permit for Atlantic dolphin/wahoo, and about 75 of those vessels are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) for charter boats are estimated to be \$126,032 for Florida vessels, \$53,443 for Georgia vessels, \$100,823 for South Carolina vessels, and \$101,959 for North Carolina vessels. For headboats, the corresponding estimates are \$209,507 for Florida vessels and \$153,848 for vessels in the other states. Headboat revenues for states other than Florida are aggregated to prevent disclosure of otherwise confidential information. For the Northeast (states north of North Carolina), in 2010, the average gross revenue for headboats was approximately \$214,000 and \$28,000 for charter vessels. The Northeast information is not currently available on a state by state basis. Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

This proposed rule would revise the ABCs, ACLs, and ACTs

for dolphin and wahoo to reflect data from MRIP and other data updates. The resulting revisions would slightly increase the values for these parameters, thus resulting in slight economic benefits for the dolphin and wahoo commercial and recreational sectors.

This proposed rule would revise the commercial and recreational AMs for dolphin and wahoo by introducing ACL overage adjustment (payback) provisions, but only if the stocks are overfished and the aggregate commercial and recreational ACLs are exceeded. Since dolphin is currently neither overfished nor undergoing overfishing, introduction of a payback provision has no short-term economic effects on the commercial and recreational sectors. Although a stock assessment for wahoo will be done in 2015, there are indications that the stock is healthy because of its life history. In addition, and based on the last 5 years of landings, both the commercial and recreational sector ACLs for wahoo are unlikely to be exceeded during a fishing year in the near future. These revisions to the AMs for dolphin and wahoo are therefore expected to have no short-term economic effects on small entities.

NMFS considered one alternative, the "no action" alternative, to the commercial and recreational AMs for dolphin and wahoo. The no action alternative does not have payback

provisions; however, AMs would apply regardless of stock status. In addition, the application of sector-specific AMs is dependent only on a sector's ACL being exceeded or expected to be exceeded and not on the aggregate commercial and recreational ACLs.

This proposed rule would also modify the framework procedures for the FMP. The proposed revisions are administrative in nature and therefore have no direct economic effects on small entities.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Dolphin, Fisheries, Fishing, Wahoo.

Dated: March 7, 2014

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.280, paragraphs (a) and (b) are revised to



read as follows:

§ 622.280 Annual catch limits (ACLs) and accountability measures (AMs).

(a) Atlantic dolphin--(1) Commercial sector. (i) If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,157,001 lb (524,807 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic dolphin is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(ii) In addition to the measures specified in paragraph (a)(1)(i) of this section, if the combined Atlantic dolphin commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (a)(1)(i) and (a)(2)(i) of this section, and Atlantic dolphin

are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the commercial ACL for that following year by the amount of the commercial overage in the prior fishing year.

(2) Recreational sector. (i) If recreational landings for Atlantic dolphin, as estimated by the SRD, exceed the recreational ACL of 14,187,845 lb (6,435,498 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings.

(ii) If the combined Atlantic dolphin commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (a)(1)(i) and (a)(2)(i) of this section, and Atlantic dolphin are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the recreational ACL for that following year by the amount of the recreational overage in the prior fishing year, and reduce the recreational fishing season by the amount necessary to ensure recreational landings do not exceed the reduced ACL. However, the recreational ACL and the length

of the recreational fishing season will not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduced recreational ACL and a reduction in the length of the following fishing season is unnecessary.

(b) Atlantic wahoo--(1) Commercial sector. (i) If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 70,542 lb (31,997 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic wahoo is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(ii) In addition to the measures specified in paragraph (b)(1)(i) of this section, if the combined Atlantic wahoo commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs

(b) (1) (i) and (b) (2) (i) of this section, and Atlantic wahoo are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the commercial ACL for that following year by the amount of the commercial overage in the prior fishing year.

(2) Recreational sector. (i) If recreational landings for Atlantic wahoo, as estimated by the SRD, exceed the recreational ACL of 1,724,418 lb (782,183 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings.

(ii) If the combined Atlantic wahoo commercial and recreational landings exceed the combined commercial and recreational ACLs specified in paragraphs (b) (1) (i) and (b) (2) (i) of this section, and Atlantic wahoo are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the recreational ACL for that following year by the amount necessary to ensure recreational landings do not exceed the reduced ACL. However, the recreational ACL and the length of the recreational fishing season will not be

reduced during the following year if the RA determines, using the best scientific information available, that a reduced recreational ACL and a reduction in the length of the following fishing season is unnecessary.

3. In § 622.281, paragraph (a) is revised to read as follows:

§ 622.281 Adjustment of management measures.

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(a) Atlantic dolphin and wahoo. Biomass levels, age-structured analyses, MSY, OY, OFL, TAC, ABC, ABC Control Rule, ACLs, ACTs, AMs, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the RA to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

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